APPENDIX A

STATUTES INVOLVED

Railway Labor Act

Section 1a (45 U.S.C. 151a):

"The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 3, First (i) through (p) (45 U.S.C. 153, First (i) through (p)):

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall

give due notice of all hearings to the employee or employees and the carrier or carriers involved in any dispute submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board

upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or other-

wise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Norris-LaGuardia Act

29 U.S.C. Sections 104, 108, 113:

Section 104. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 102 of this title."

* * * * *

Section 108. "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

* * * * *

Section 113. "When used in this chapter, and for the purposes of this chapter—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is

sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

APPENDIX B

Opinion of the United States District Court for the District of Colorado
185 F. Supp. 369

CHILSON, District Judge.

The essential facts are not controverted.

The Brotherhood of Railroad Trainmen, in accordance with the Railway Labor Act (44 Stat. 577, 45 U.S.C.A. § 151 et seq.), submitted to the National Adjustment Board certain claims of some of its members for additional pay, growing out of the interpretation or the application of pre-existing contracts of employment entered into between the Brotherhood and The Denver and Rio Grande Western Railroad Company.

In December, 1959 and January, 1960, the National Adjustment Board made money awards in favor of the employees, and entered orders for the railroad to pay the

first award on or before January 17, 1960 and the second award on or before February 20, 1960.

The railroad refused to make payment.

On May 16, 1960, the employees went on strike to enforce payment of the awards. The railroad brought this action to enjoin the strike. A preliminary injunction was entered and the issue now before the Court is whether or not a permanent injunction should issue.

The Railway Labor Act [45 U.S.C.A. § 153 First (p)] provides in essence that if a carrier does not comply with an order of the Adjustment Board of the kind here involved, the employees may file an action in the District Court of the United States to enforce the award.

The railroad contends that such a court action is the sole means by which an award of the Board may be enforced.

The Brotherhood makes two contentions; first, that the employees' rights of enforcement are not limited solely to a court action, but that they have the alternative right to enforce the award by strike. Secondly, the Brotherhood contends that the Norris-LaGuardia Act (29 U.S.C.A. §§ 101-115) prohibits this Court from granting injunctive relief to prevent a strike to enforce the awards.

Although the United States Supreme Court has not had occasion to pass upon the first question here involved, namely: whether or not the employees' sole means of enforcement of such an award is by resort to the court, the United States Supreme Court has on more than one occasion reviewed the purpose and Congressional intent of the Railway Labor Act and the 1934 amendments thereto. [See Elgin, Joliet and Eastern Railway Co. v. Burley, 1945, 325 U.S. 711, 65 S. Ct. 1282, 89 L. Ed. 1886; Brotherhood of Railroad Trainmen et al. v. Chicago River and Indiana Railroad Co. et al., 1957, 353 U.S. 30, 77 S. Ct.

635, 1 L. Ed. 2d 622; Union Pacific Railroad Co. v. Price, 1959, 360 U.S. 601, 79 S. Ct. 1351, 3 L. Ed. 2d 1460.]

From the Court's construction of the Railway Labor Act in the foregoing cases, it is clear that the Act recognizes two classes of controversy which are traditionally referred to as the "major" and "minor" disputes of the railway labor world.

[1] "Major" disputes relate to the disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement, or where it is sought to change the terms of one. They look to acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

[2] "Minor" disputes contemplate the existence of a collective agreement already concluded, and the dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation. In other words, a minor dispute relates to rights accrued and not merely to have new ones created for the future.

The Railway Labor Act as amended in 1934 marks out two distinct routes for settlement of the two classes of disputes.

Major disputes, if not settled by negotiation, go first to mediation under the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, and finally, to possible presidential intervention. But as to major disputes, compulsion goes only to insure that these procedures are exhausted before resort can be had to self-help such as strikes. No authority is empowered to decide the dispute, and no such power is intended unless the parties themselves agree to arbitration.

[3] The course prescribed for the settlement of minor disputes is very different beyond the initial stages of negotiation. Thereafter the Act does not leave the parties wholly free at their own will to agree or not to agree. On

the contrary, one of the main purposes of the 1934 amendments to the Railway Labor Act was to provide a more effective process of settlement.

An Adjustment Board was created to remove the settlement of minor disputes from a deadlock resulting from non-agreement of the parties, and to bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to aid decision where agreement fails, and thus to safeguard the public as well as private interests against the harmful effects of a deadlock.

In this case we have a minor dispute.

The Railway Labor Act provides as to minor disputes that if the negotiations provided for in the Act do not result in an agreement, the dispute may be referred by either party to the National Adjustment Board [45 U.S.C.A. § 153 First (i)].

In accordance with this provision, the employees, through the Brotherhood, did submit the dispute to the Board. The Board made its award consisting of a money award to be paid by the railroad to the employees.

45 U.S.C.A. § 153 First (m), states that the awards of the Board shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.

45 U.S.C.A. § 153 First (o) authorizes the Board to make an order directed to the railroad to make the award effective, and if the award includes a requirement for payment of money, the order will require payment to the employee on or before a day named.

Such an order was made in this case.

Title 45 U.S.C.A. § 153, First (p) recognizes the possibility that the railroad might not comply with the Adjustment Board's order, and provides in effect that if

the carrier does not comply with the order of the Board within the time prescribed, the employees may bring an action in the United States District Court for enforcement of the award.

This is the only step provided by the Railway Labor Act which has not been taken by the employees in this particular dispute, and the employees contend that they are not limited to this prescribed procedure to enforce the award but may employ other means to do so.

As previously noted, the Supreme Court has not decided this precise question, but the Court, in its consideration of the Railway Labor Act, has pointed the way to the answer to the question here involved.

In Elgin, Joliet and Eastern Railway Co. v. Burley, supra, it was contended that the award of the Adjustment Board amounts to nothing more than an advisory opinion, and, therefore, the parties were entirely free to ignore the Board's decision and seek other means to determine their dispute. The Court said [325 U.S. 711, 65 S. Ct. 1288]:

> "At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history."

In the case of Slocum et al. v. Delaware, Lackawanna and Western Railroad Co., 339 U.S. 239, at page 244, 70 S. Ct. 577, at page 580, 94 L. Ed. 795, the Supreme Court, in speaking of the application of the Railway Labor Act to a minor dispute, said:

> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive."

In the case of Pennsylvania Railroad Co. v. Day, 360 U.S. 548, 79 S. Ct. 1322, 1325, 3 L. Ed. 2d 1422, the Supreme Court, again speaking of minor disputes, said:

"Our consistent regard for the importance of having disputes between railroad employees and carriers settled by the administrative Board which Congress established for that purpose requires respondent to resort to the NRAB for adjudication of his claim."

In the case of Brotherhood of Railroad Trainmen et al. v. Chicago River and Indiana Railroad Co. et al., supra [353 U.S. 30, 77 S. Ct. 640] the Supreme Court reviewed the history and purposes of the 1934 amendments to the Railway Labor Act pertaining to the settlement of minor disputes, and stated without dissent,

"This record is convincing that there was general understanding between both the supporters and the opponents of the 1934 amendment that the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field."

It is clear then that the procedures prescribed by the Railway Labor Act to arrive at a decision of a minor dispute are exclusive.

It is urged by the Brotherhood, however, that the procedure prescribed by the Act for the enforcement of the decision, as opposed to the procedure to obtain a decision, is not exclusive.

With this position this Court cannot agree.

"The purpose of the Railway Labor Act was to provide a framework for peaceful settlement of labor disputes between carriers and their employees to 'insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies.'" Union Pacific Railroad Co. v. Price, 360 U.S. 601, at page 609, 79 S. Ct. 1351, at page 1356, 3 L. Ed. 2d 1460.

To hold that the procedures for decision are exclusive and that the procedure for enforcement is not exclusive

would be inconsistent with the purposes of the Act. The injury to the public is the same whether the interruption of interstate commerce is for the purpose of obtaining a decision or for the purpose of enforcing a decision. To permit the interruption of service for the purpose of enforcing a decision of the Adjustment Board, when the Act itself provides a remedy for such enforcement, would defeat the essential purposes of the Act.

The Supreme Court, in considering the Railway Labor Act has said,

> "The specification of one remedy normally excludes another." Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297-301, 64 S. Ct. 95-97, 88 L. Ed. 61; Union Pacific Railroad Co. v. Price, 360 U.S. 601-608, 79 S. Ct. 1351-1355, 3 L. Ed. 2d 1460.

The Court concludes that Congress having provided a means of enforcement of the Board's award by court action, the prescribed procedure excludes any other means of enforcement, including enforcement by strike.

[4] The Brotherhood asserts that the provision of the Act for enforcement of the award through Court [45 U.S.C.A. § 153 First (p)], affords the railroad an opportunity to relitigate the issues decided by the Adjustment Board, while the employee has no resort to the court to relitigate the issues if the award is adverse to him.

The assertion is correct, and the situation has led to a division of opinion within the Supreme Court and dissenting opinions in the cases of Pennsylvania Railroad Co. v. Day, 360 U.S. 548, at page 554, 79 S. Ct. 1322, at page 1325, 3 L. Ed. 2d 1422, and Union Pacific Railroad Co. v. Price, 360 U.S. 601, at page 617, 79 S. Ct. 1351, at page 1360, 3 L. Ed. 2d 1460.

However, the law which governs this Court is stated in the majority opinion in Union Pacific Railroad Co. v. Price, supra, as follows:

> "The disparity in judicial review of Adjustment Board orders, if it can be said to be unfair at all, was explicitly created by Congress, and it is for Congress to say whether it ought to be removed." Union Pacific Railroad Co. v. Price, supra, 360 U.S. at page 615, 79 S. Ct. at page 1359.

We turn now to a consideration of the application of the Norris-LaGuardia Act to this case.

The railroad contends that the Norris-LaGuardia Act does not apply to settlement of minor disputes under the Railway Labor Act, and therefore the provisions of the Norris-LaGuardia Act do not prohibit injunctive relief in this case.

[5] The employees first contend that the Norris-LaGuardia Act prohibits injunctive relief, except in cases where the mandatory provisions of the Railway Labor Act have been violated. Assuming this to be a correct statement of the application of the Act, the Court's determination that the remedy for the enforcement of the awards prescribed by the Act is exclusive, brings this case within the exception stated.

The employees next contend that the Norris-LaGuardia Act prohibits injunctive relief, because the carrier has not gone beyond its legal obligations under the Act and made additional efforts to settle the dispute (page 6, Defendants' Supplemental Memorandum). Defendants cite in support of this position the case of Brotherhood of Railroad Trainmen, etc. v. Toledo, Peoria and Western Railroad, 321 U.S. 50, 64 S. Ct. 413, 88 L. Ed. 534. Injunctive relief was denied in that case because the carrier did not see fit to use one of the means provided by the Act to settle the dispute, namely: arbitration. This Court cannot read into that decision a requirement

that the carrier must go beyond the procedures provided in the Act.

In this case the procedures provided by the Act to obtain a decision have been exhausted and a decision has been obtained. The carrier is not required to enter into further negotiations in an attempt to compromise the awards which have been made before it can apply for injunctive relief.

In considering the application of the Norris-LaGuardia Act to a minor dispute such as the one here involved, the Supreme Court has said:

> "The only question which remains is whether the federal courts can compel compliance with the provisions of the Act to the extent of enjoining a union from striking to defeat the jurisdiction of the Adjustment Board. The Brotherhood contends that the Norris-LaGuardia Act has withdrawn the power of federal courts to issue injunctions in labor disputes. That limitation, it is urged, applies with full force to all railway labor disputes as well as labor controversies in other industries.
>
> "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable." Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Co., 353 U.S. 30, at page 39, 77 S. Ct. 635, at page 640, 1 L. Ed. 2d 622.

The Court in the same opinion (353 U.S. at page 41, 77 S. Ct. at page 641) further stated:

> "In Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768 [72 S. Ct. 1022, 96 L. Ed. 1283], and other similar cases, the Court held that the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act.

"'Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act.' Id., [343 U.S.] at [page] 774, [72 S. Ct. at page 1025]."

This Court concludes it has injunctive power in this case, and a permanent injunction should issue.

APPENDIX C

Opinion of the United States Court of Appeals for the Tenth Circuit

Before MURRAH, Chief Judge, PICKETT, Circuit Judge, and KERR, United States District Judge.

PICKETT, Circuit Judge.

* * * * * * *

This is an appeal from a decree of the United States District Court for the District of Colorado, permanently enjoining the defendants[1] from conducting a strike against the plaintiff's railroad to enforce payment of money awards made by the National Railroad Adjustment Board in favor of some of the railroad's employees who are members of the Brotherhood. The principal question for determination is whether the remedies provided in Section 3 of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., are exclusive and deny to the employees or their representatives the right to call a strike to enforce the awards made by the Board. We agree with the trial court that the strike call was illegal because in disputes of the nature here involved, the statutory remedy is exclusive, and the Board's money award may be enforced only by an action in the United States

[1] The defendants are the Brotherhood of Railroad Trainmen, the local lodges, and their officers.

District Court as provided for in Section 3, First (p) of the Act. 45 U.S.C.A. § 153, First (p).[2]

The facts have been stipulated, and the findings of fact are not questioned here. The dispute arose under collective bargaining agreements governing the terms and conditions of employment of the employees represented by the Brotherhood. A number of the employees claimed that, under the provisions of the agreement, they were entitled to compensation for services rendered in addition to their regular duties. The Railroad denied the claims, and the employees resorted to the statutory procedure which resulted in money awards being made to the employees by the proper division of the National Railroad Adjustment Board. The Railroad refused to honor the awards, and a strike was called, which, if carried out, would seriously affect the

[2] 45 U.S.C.A. § 153, First (p) reads:

"If a carrier does not comply with an order of a division of the adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated; and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expense of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Railroad's operation.[3] Upon application of the Railroad, the District Court temporarily enjoined the strike, and upon hearing the injunction was made permanent. Denver & R. G. W. R. R. v. Brotherhood of Railroad Trainmen, (Colo.) 185 F. Supp. 369.

The purposes of the Act are set forth therein,[4] and they have been stated in numerous Supreme Court decisions, a detailed recount of which would serve no useful purpose here. It suffices to say that the primary purpose of the Act and the 1934 Amendment thereto was to avoid interruption of commerce by promoting industrial peace, stabilizing the relationship between labor and management, and eliminating, as far as possible, the danger of strikes on the nation's railroads. Pennsylvania R.R. v. Day, 360 U.S.

[3] The Railroad is a common carrier, operating a system consisting of approximately 2100 miles of track, in both interstate and intrastate commerce, with main lines extending from Denver, Colorado Springs and Pueblo, Colorado, to Salt Lake City and Ogden, Utah, and with numerous branches on the main line. It has approximately 5,000 employees, investments in excess of $250 million, and a gross revenue from freight and passenger operations of approximately $75 million annually. It is an important part of the national railway system.

[4] 45 U.S.C.A. § 151a provides:

"The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

548; Union Pac. R.R. v. Price, 360 U.S. 601;[5] Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R., 353 U.S. 30.

Disputes over the interpretation or application of provisions of existing collective bargaining agreements have been generally referred to as "minor" disputes to distinguish them from those growing out of negotiations to reach an agreement on a contract relating to the future, which disputes are characterized as "major."[6] The latter usually affect the pay and working conditions of an entire class of employees. For the settlement of these two classes of dispute the statute fixes two distinct methods. Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R., supra; Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 722. When there is a failure to settle major disputes, after exhausting the statutory remedies, the employees are free to resort to economic duress. Telegraphers v. Chicago & N. W. R., 362 U.S. 330, 341; Elgin, J. & E. Ry. v. Burley, supra, at 725.

[5] The Union Pac. R.R. v. Price, 360 U.S. 601, 609, the court said:

"The purpose of the Railway Labor Act was to provide a framework for peaceful settlement of labor disputes between carriers and their employees to 'insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses contingent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies.' * * *"

[6] The trial court defined the nature of these disputes as follows:

"'Major' disputes relate to the disputes over the formation of collective agreements or efforts to secure them. They arise when there is no such agreement, or where it is sought to change the terms of one. They look to acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

"'Minor' disputes contemplate the existence of a collective agreement already concluded, and the dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation. In other words, a minor dispute relates to rights accrued and not merely to have new ones created for the future." Denver & R.G.W.R.R. v. Brotherhood of Railroad Trainmen, (Colo.) 185 F. Supp. 369, 371.

But, as to minor disputes the statutory scheme for settlement is different. The law is well settled that "the jurisdiction of the Board to adjust such grievances and disputes of the type here involved is exclusive",[7] and the employees may be enjoined from striking over such disputes after they have been submitted to the Adjustment Board. In Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R., supra, the Court reviewed the legislative history of the Act, and held that the 1934 amendment was intended to provide for compulsory arbitration in minor disputes[8] so that a strike by employees could be enjoined for failure to submit to arbitration in accordance with the Act.

---

[7] Slocum v. Delaware, L. & W. R.R., 339 U.S. 239, 244.

[8] In Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R., 353 U.S. 30, 34-35, it was said:

"Section 3, First (m), declares that—

'The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute . . . .'

"This language is unequivocal. Congress has set up a tribunal to handle minor disputes which have not been resolved by the parties themselves. Awards of this Board are 'final and binding upon both parties.' And either side may submit the dispute to the Board. The Brotherhood suggests that we read the Act to mean only that an Adjustment Board has been organized and that the parties are free to make use of its procedures if they wish to; but that there is no compulsion on either side to allow the Board to settle a dispute if an alternative remedy, such as resort to economic duress, seems more desirable. Such an interpretation would render meaningless those provisions in the Act which allow *one* side to submit a dispute to the Board, whose decision shall be final and binding on *both* sides. If the Brotherhood is correct, the Adjustment Board would act only if the union and the carrier were amenable to its doing so. The language of § 3, First, reads otherwise and should be literally applied in the absence of a clear showing of a contrary or qualified intention of Congress.

"Legislative history of the provisions creating the National Railroad Adjustment Board reinforces the literal interpretation of the Act. The present law is a composite of two major pieces of legislation. Most of the basic framework was adopted in 1926. In 1934 after eight years of experience, the statute was amended, and in that amendment the Adjustment Board was born." Footnotes omitted.)

The contention here is that since the employees did submit their disputes to the Adjustment Board, which made money awards in their favor, the failure of the Railroad to honor the awards leaves them free to strike. This position is premised upon the corollary contention that the provision authorizing an action to be brought in the federal district court is not mandatory. With these contentions we cannot agree. We think that the rationale of the Supreme Court decisions is to the effect that the statutory proceedings before the Board in minor disputes provide an appropriate and fair substitute for the right to strike, and that the district court action provided in Section 3, First (p) of the Act is the enforcement procedures in the compulsory arbitration machinery adopted by Congress in the 1934 amendment.[9] It therefore is the

[9] The history of the legislation as set forth in Union Pac. R.R. v. Price, 360 U.S. 601; Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R., 353 U.S. 30; and Elgin, J. & E.R. v. Burley, 325 U.S. 711, sustains this conclusion. In the case "Chicago River" the court, after referring to the pertinent legislative history of changes brought about by the 1934 amendments said:

"The change was made with the full concurrence of the national railway labor organizations. Commissioner Joseph B. Eastman, Federal Coordinator of Transportation and principal draftsman of the 1934 bill, complimented the unions on conceding the right to strike over 'minor disputes' in favor of the procedures of the Adjustment Board:

> 'The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill.' (Footnote omitted.)

The Court continued, at page 39:

"This record is convincing that there was general understanding between both the supporters and the opponents of the 1934 amendment that the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field. Our reading of the Act is therefore confirmed, not rebutted, by the legislative history."

only course to be followed in obtaining the enforcement of money awards.

In Union Pac. R.R. v. Price, supra, it was held that a railroad employee could not maintain a common law action for damages on a claim which had been denied by the Board, even though a carrier has a statutory right to relitigate money awards which the Board has directed it to pay. It is quite obvious that Congress thought that the statutory method for enforcing the Board's money awards in favor of employees was preferable to the devastating effect of an interruption of interstate commerce caused by a strike on a portion of the nation's railroad system. It is true that the Act does not provide a judicial review of the Board's actions when the employee is unsuccessful, but if this provision creates an unfair disparity, as the Supreme Court said in Union Pac. R.R. v. Price, supra, "it is for Congress to say whether it ought to be removed."

It is urged that the injunction entered in this case is prohibited by Section 8 of the Norris-LaGuardia Act, 29 U.S.C.A. § 108. We think this question was answered in the case of Brotherhood of Railroad Trainmen v. Chicago River & Ind. R.R. supra, in which it was held that the general terms of the Norris-LaGuardia Act could not be read alone in matters dealing with railway labor disputes, and that it did not prevent injunctions to prohibit strikes growing out of minor disputes which were specifically dealt with in the Railway Labor Act. See also Brotherhood of Locomotive Engineers v. Missouri-Kan.-Tex. R.R., 363 U.S. 528; and Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768. Cf. Chauffeurs, Teamsters, etc. v. Yellow Trans. Frgt. Lines, 10 Cir. 282 F. 2d 345.

Affirmed.

Judgment

Sixteenth Day, March Term, Thursday, April 13, 1961.

Before Honorable Alfred P. Murrah, Chief Judge, Honorable John C. Pickett, Circuit Judge, and Honorable Ewing T. Kerr, District Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.